

STATE OF MINNESOTA
OFFICE OF ADMINISTRATIVE HEARINGS
FOR THE DEPARTMENT OF COMMERCE

In the Matter of the Insurance Agent
License of Thomas Casey, Sr.,
License No. 0124394.

**ORDER DISMISSING LICENSEE'S
RESUBMITTED APPLICATION
FOR FEES AND OTHER
EXPENSES**

This matter is before Administrative Law Judge Steve M. Mihalchick on Licensee's Resubmitted Application for Fees and Other Expenses.

Thomas E. Harms, Hessian, McKasy, & Soderberg, 4700 IDS Center, 80 South Eighth Street, Minneapolis, Minnesota 55402-2228, appeared on behalf of the Licensee, Thomas Casey, Sr. Susan E. Damon, Assistant Attorney General, Suite 1200, 445 Minnesota Street, St. Paul, Minnesota 55101-2130, appeared on behalf of the Department of Commerce.

Based on the record herein, and for reasons stated in the following Memorandum, the Administrative Law Judge makes the following:

ORDER

Licensee's Resubmitted Application for Fees and Other Expenses is DISMISSED.

Dated: March 14, 1996.

STEVE M. MIHALCHICK
Administrative Law Judge

MEMORANDUM

On August 24, 1994, the Administrative Law Judge issued a report recommending that the disciplinary action against Licensee be dismissed in its entirety. On July 12, 1995, the Commissioner of Commerce issued his Order rejecting a portion of the ALJ's recommendation, finding a violation with regard to one of the allegations that had been made, and imposing a civil penalty of \$500.00. Shortly thereafter, Licensee appealed that Order to the Court of Appeals.

On February 22, 1995, while the appeal was pending, Licensee filed an Application for Fees and Other Expenses under the Minnesota Equal Access to Justice Act, Minn. Stat. § 15.471 to 15.475 (1994). On April 6, 1995, the ALJ issued an Order dismissing Licensee's Application based upon the language contained in Minn. Stat. §15.474, subds. 1 and 3, and Minn. R. 1400.8400, subp. 6. On April 10, 1995, Licensee moved for reconsideration, which was denied by an Order of April 13, 1995.

The ALJ dismissed the Application on the basis of Minn. R. 1400.8400, subp. 6, which provides that if all or any part of the final agency decision is appealed, the application for fees and expenses must be made to the court. Thus the ALJ no longer had jurisdiction to consider the Application.

On November 28, 1995, the Court of Appeals issued its decision reversing the Commissioner's Order imposing the \$500.00 civil penalty. The Commissioner sought review by the Supreme Court. On February 9, 1996, the Supreme Court issued its Order granting the Commissioner's petition for review and reinstating the \$500.00 civil penalty.

On March 7, 1996, Licensee file a letter with the ALJ "resubmitting" the Application for Fees and Other and Expenses and stating that the ALJ had "ruled that during the pendency of the appeals," the ALJ lacked jurisdiction to consider the Application. On March 13, 1996, Department filed a letter objecting to the resubmission and arguing that the ALJ had already ruled that he lacked jurisdiction and that that ruling had **not** been made "pending appeals".

The Department is correct. Neither the Court of Appeals decision nor the Supreme Court Order remand the fees issue to the ALJ and nothing in Minn. Stat. §15.474, subds. 1 and 3, or Minn. R. 1400.8400, subp. 6, grant jurisdiction to the ALJ to consider a fees petition once the final agency decision has been appealed. The fact that the appeals are now complete changes nothing relevant to that conclusion.

S.M.M.